



(Billing Code 5001-06)

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 225 and 252**

**[Docket DARS-2015-0052]**

**RIN 0750-AI76**

**Defense Federal Acquisition Regulation Supplement: Duty-Free Entry Threshold (DFARS 2015-D036)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update the threshold for duty-free entry on foreign supplies that are not from qualifying countries.

**DATES:** Effective [Insert date of publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Mr. Christopher Stiller, telephone 571-372-6176.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD published a proposed rule in the Federal Register at 80 FR 72672 on November 20, 2015, to revise DFARS 225.901(3), and the clause 252.225-7013, Duty-Free Entry, by updating the \$200

threshold that was established on April 30, 2003, to \$300. There were no public comments submitted in response to the proposed rule. There are no changes from the proposed rule made in the final rule.

## **II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items**

This rule merely updates the threshold for duty-free entry on foreign supplies that are not qualifying country suppliers or eligible products under a trade agreement. The clause at DFARS 252.225-7013, Duty-Free Entry, which is prescribed for use in lieu of Federal Acquisition Regulation clause 52.225-8, may be used in acquisitions at or below the simplified acquisition threshold when the savings from waiving the duty is anticipated to be more than the administrative cost of waiving the duty. The clause is not prescribed for use in contracts for commercial items, including commercially available off-the-shelf items.

## **III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563

emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### **IV. Regulatory Flexibility Act**

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

The objective of this rule is to amend Defense Federal Acquisition Supplement (DFARS) subpart 225.9 and the clause at 252.225-7013, Duty-Free Entry, to update the threshold for duty-free entry on foreign supplies that are not from the qualifying countries.

No comments were received from the public regarding the initial regulatory analysis.

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities because this rule only makes an upward inflationary adjustment of an administrative threshold, from \$200 to \$300, at DFARS 225.901(3) and the clause at DFARS 252.225-7013. The information requested in DFARS clause 252.225-7013 supplements the information

requested in the Federal Acquisition Regulation clause at 52.225-10 and is required only if the contractor is requesting duty-free entry.

Current data indicates, on average, approximately 31,500 duty-free entry certificates on foreign supplies for DoD per year. DoD does not expect a change in the estimated duty-free entry processes because the change is consistent with the rate of inflation; therefore, small entities will not be materially affected by this rule.

This rule does not impose any additional reporting, recordkeeping, and other compliance requirements.

There are no known significant alternatives to the rule. The impact of this rule on small business is not expected to be significant.

## **V. Paperwork Reduction Act**

The rule affects the information collection requirements in the clause at DFARS 252.225-7013, currently approved under OMB Control Number 0704-0229, entitled "Defense Federal Acquisition Regulation Supplement Part 225, Foreign Acquisition, and related clauses," in accordance with the Paperwork Reduction Act (44.U.S.C. chapter 35). The impact, however, is negligible, because this rule only makes an upward adjustment of the duty-free entry threshold from the \$200 to \$300, consistent with the rate of inflation.

## **List of Subjects in 48 CFR Parts 225 and 252**

Government procurement.

**Jennifer L. Hawes,**

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

1. The authority citation for parts 225 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

### **PART 225—FOREIGN ACQUISITION**

#### **225.901 [Amended]**

2. In section 225.901, amend paragraph (3) by removing "\$200" and adding "\$300" in its place.

### **PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

#### **252.225-7013 [Amended]**

3. Amend section 252.225-7013 by—

a. Removing the clause date "(NOV 2014)" and adding "(MAY 2016)" in its place; and

b. Amending paragraph (b)(3) by removing "\$200" and adding "\$300" in its place.

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